



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

On March 31, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package, and some evidence, by registered mail on April 5, 2023, and the Landlord confirmed receiving this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing package, with some evidence.

He then advised that additional evidence was served to the Landlord by Xpressepst; however, he was not sure when this was done, and he was confused about what evidence this was. The Landlord confirmed that she received a second package from the Tenant on May 1, 2023, and she was informed that if the Tenant referred to any

evidence that she did not have before her, to bring this to my attention. However, she did not raise any concerns during the hearing. Regardless, based on this testimony, as the Tenant's evidence has been served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that she emailed her evidence to the Tenant on May 17, 2023, despite not having consent to exchange documents by email with the Tenant. The Tenant confirmed that he received this email on May 17, 2023, and that he was able to review it. He was provided with an opportunity to identify any prejudice to him by the Landlord serving this evidence by email, but he did not raise any concerns about how service of this evidence by email was unfair to him, or how it affected his ability to respond. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the most current tenancy started on January 1, 2022, that rent was currently established at \$800.00 per month, and that it was due on the 3rd day of each month. Despite the tenancy agreement indicating that a security deposit of \$500.00 was paid, she claimed that the Tenant actually paid a \$300.00 security deposit, and a \$200.00 pet damage deposit, but this was incorrectly noted by her in the agreement. The Landlord was cautioned about collecting a security deposit in excess of a half a month's rent pursuant to Section 19 of the *Act*. A copy of the most current, signed tenancy agreement was submitted as documentary evidence for consideration. In addition, despite the Landlord not identifying the specific rental unit rented to the Tenant on the tenancy agreement, she conceded that it was most likely the basement unit.

The Tenant confirmed that the most current tenancy started on January 1, 2022, that rent was currently established at \$800.00 per month, and that it was due on the 3rd day of each month. He claimed that he actually paid a \$500.00 security deposit, to an agent of the Landlord, when the tenancy originally started in 2019. He agreed that the dispute address of the rental unit was most likely the basement. As such, the Style of Cause has been amended on the first page of this Decision to reflect this correction.

All parties also agreed that the Tenant was served the Notice by being emailed on March 31, 2023. Again, while the Landlord served this by email, without prior consent by both parties to exchange documents by email, this still does not change the fact that the Tenant received it on March 31, 2023. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, the Landlord indicated that the persons that would be specifically occupying the rental unit would be "The father or mother of the landlord or landlord's spouse." The effective end date of the tenancy was noted as May 31, 2023, on the Notice. The Tenant confirmed that he understood that this Notice was for him, and the rental unit that he resided in, despite the Landlord not identifying this on the Notice.

The Landlord advised that the Notice was served because they had been planning for the past year to have her mother-in-law live in the rental unit. She testified that her mother-in-law was supposed to move in in November 2023; however, she moved early, on or around April 15, 2023, so that she could see her already two-year-old granddaughter. She stated that her mother-in-law is living with them currently, and there are many stairs that she cannot navigate as she walks with a limp. The Landlord advised that the intention was for her mother-in-law to move into the rental unit and stay there, and all foods and necessities would be brought down to her. She did not submit any documentary evidence to support any submissions regarding the mother-in-law's health condition, or of any prior plans to have her mother-in-law move into the rental unit.

She stated that the Notice was not served due to past difficulties with the Tenant as those had been previously dealt with. As well, she claimed that she was not knowledgeable of her rights and responsibilities as a Landlord under the *Act*, and that she relied on information provided to her by the Tenant.

The Tenant advised that he had a conversation with the Landlord's husband on January 8, 2022, where the rent was increased to \$800.00. As well, he stated that this person noted that rent would not be increased for 2023, and that he would be required to give 30 days' written notice if he wanted to end the tenancy.

The Tenant then testified that this person knocked on his door on March 5, 2023, and stated that his father had plans to possibly use the rental unit as an office. As well, he stated that this person talked about the mortgage. He then submitted that this person left to speak to his father, then came back and informed the Tenant that the father would like the rental unit as an office.

The Tenant then made many submissions that were not relevant to reason on the Notice. Regardless, it is the Tenant's position that the Landlord did not serve the Notice in good faith as there was no mention of the mother-in-law's inability to walk. Moreover, he submitted that the Landlord could not keep her stories straight in the exchanged text messages, but these were not submitted as documentary evidence for consideration.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, given that the Tenant agreed that the Notice was for the rental unit despite this not being indicated on the Notice, I am satisfied that the Notice meets all of the requirements of Section 52 of the *Act*. As such, I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Moreover, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant.

When reviewing the evidence and submissions before me, I note that the Landlord's initial testimony was general and extremely brief, with little detail. Even when she was questioned about when it was planned for her mother-in-law to move into the rental unit, the Landlord could not provide anything concrete.

When reviewing the documents submitted by the Landlord, dated April 2, 2023, and May 17, 2023, I note that neither of these indicate what the Landlord was allegedly planning to use the rental unit for in the summer of 2023. Moreover, these documents indicate that as far back as January 1, 2022, she was of the mind that the Tenant would be possibly vacating the rental unit by the summer of 2023, but there was no mention of the plan to have the mother-in-law move in. I find that there is nothing in this documentary evidence to support the Landlord's submission that there had been a plan for her mother-in-law to move into the rental unit prior to service of the Notice. In addition, I note that the Landlord has not submitted any documentary evidence to corroborate her submissions about the mother-in-law's inability to go up and down the stairs.

Furthermore, I find it important to note that both of these documents outline many issues that the Landlord has had concerning the Tenant's conduct in the past. Given the fact that the Landlord acknowledged that she knew little of her rights and responsibilities of the *Act* and that she relied on the Tenant informing her, I do not find the Landlord's submissions to be reliable. I find it more likely than not that this Notice was not served in good faith, but was likely served for some other ulterior motive. Even if I were to accept that it was the Landlord's intention to have her mother-in-law move in prior to service of the Notice, there is no documentary evidence to support this at all. As such, I am not satisfied, on a balance of probabilities, that the Notice was served in good faith.

Ultimately, as I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice, I find that the Notice of March 31, 2023, is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. As such, the Tenant is permitted to withhold this amount from the next month's rent to satisfy this debt.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of March 31, 2023, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 26, 2023

Residential Tenancy Branch